

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**NAVIANCE, INC.**  
(hereinafter referred to as "NAVIANCE"),  
whose principal place of business is  
3033 Wilson Boulevard, Suite 500, Arlington, VA 22201

**WHEREAS**, the SBBC is in need of a District-wide software solution for K-12 College and Career Readiness;

**WHEREAS**, SBBC issued a Request for Information identified as RFI FY20-221 Comprehensive K-12 College and Career Readiness Solution (hereinafter referred to as "RFI") dated April 8, 2020, which is incorporated by reference herein, for the purpose of receiving submittals for comprehensive K-12 college and career readiness solutions;

**WHEREAS**, NAVIANCE offered a submittal dated April 30, 2020 (hereafter referred to as "Submittal") which is incorporated by reference herein, in response to the RFI;

**WHEREAS**, in order to prepare today's students for tomorrow's world, students require personalized information and readiness on postsecondary options;

**WHEREAS**, NAVIANCE is willing to provide such product to the SBBC;

**WHEREAS**, NAVIANCE is the premier tool for college and career readiness; and

**WHEREAS**, SBBC pursuant to Department of Education Rule 6A-1.012 (11B and 14), Florida Administrative Code, and School Board Policy 3320, Section II, H, which authorizes the purchase of any computer software without competitive solicitations.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** The term of this Agreement shall commence on September 29, 2020, and shall conclude on September 28, 2023. The term of the Agreement may, by mutual agreement between SBBC and NAVIANCE in writing in the form of an amendment to this Agreement, be renewed, at the same cost, for two (2) additional one (1) year periods.

2.02 **Description of Goods and Services.**

(a) NAVIANCE shall provide SBBC with the Scope of Services in its Submittal and in compliance with this Agreement and the RFI for grades 6 - 12.

(b) **NAVIANCE Essentials Solution.** NAVIANCE shall provide all district middle and high school students with college and career training that personalizes college-readiness platforms through its NAVIANCE Essentials Solution software. The NAVIANCE Essentials Solution software provides college and career planning tools and analytics to evaluate the effectiveness of CCLR (College, Career and Life Readiness) strategy and initiatives. This solution supports all six (6) competencies identified by the CCLR Framework with features that deliver enhanced support for Career Knowledge, College Knowledge and Interpersonal Skills competencies. The Naviance Essentials Solution includes Naviance for High/Middle School, eDocs, AchieveWorks, Alumni Tracker, Career Key, and Naviance Insights Premium. The NAVIANCE Essentials Solution software includes a browser interface and data encryption, transmission, access, and storage. SBBC is responsible for its own internet connection, communications and computer.

(c) **NAVIANCE Essentials Solution Enhancements.** NAVIANCE shall:

- 1) within two (2) months of the date of this Agreement, update NAVIANCE Essentials Solution software to deliver updated filtering and sorting of scholarships capability across all databases;
- 2) within four (4) months of the date of this Agreement, deliver, to SBBC, NAVIANCE Student Readiness Reports;
- 3) within five (5) months of the date of this Agreement, update NAVIANCE Essentials Solution software to deliver updated and added functionality for careers, including more work-based learning and opportunities for students to explore career game plans with two (2) or four (4) year college, military, and direct to workforce plans;
- 4) within twelve (12) months of the date of this Agreement, update NAVIANCE Essentials Solution software to deliver updated messaging and notification ability, including short message service (“SMS”);
- 5) within twelve (12) months of the date of this Agreement, update NAVIANCE Essentials Solution software to deliver updated improvements to scholarship functionality, including, but not limited to, information about scholarships offered by individual colleges.

(d) **Consultation.** For eighty (80) hours each year during the term of this Agreement, for a total of two hundred forty hours (240), NAVIANCE Consultants shall partner with all district middle and high schools, providing a customized implementation plan aligned to our CCLR Framework and implementation methodology. Consultants deliver services onsite and remotely to ensure a successful Naviance implementation for students and staff.



2.03 **Priority of Documents.** In the event of a conflict between documents, the following priority of documents shall govern:

- First: This Agreement, then;
- Second: RFI FY20-221 – Comprehensive K-12 College and Career Readiness Solution
- Third: Submittal submitted in response to the RFI by NAVIANCE

2.04 **Cost.** The cost to SBBC for eighty (80) hours of Consultation and a license to the NAVIANCE Essentials Solutions software for three (3) years is One Hundred Fifty Thousand Dollars and 00/100 Cents (\$150,000.00) per year for a total of Four Hundred Fifty Thousand Dollars and 00/100 Cents (\$450,000.00) for the entire term of this Agreement.

Product or Service	Quantity	Unit	Start Date	Term
Naviance Essentials Solution	All students grades 6 – 12	Enrollment	9/29/20	36 months
Consulting Hours	80	Hours	9/29/20	12 months
Consulting Hours	80	Hours	9/29/21	12 months
Consulting Hours	80	Hours	9/29/22	12 months
Total Price			\$450,000.00	

2.05 **Payment.**

(a) Invoice dates and amounts are due as follows:

Invoice Date	Invoice Amount
9/29/2020	\$150,000 USD
9/29/2021	\$150,000 USD
9/29/2022	\$150,000 USD

(b) VENDOR shall submit an appropriate invoice to SBBC for the amount and on the dates outlined above. VENDOR shall complete any and all Consultation hours from the prior year in advance of submitting the invoices dated September 29, 2021 and September 29, 2022. SBBC will pay VENDOR in net (30) days from the date of the each invoice.

2.06 **SBBC Disclosure of Education Records.**

(a) SBBC will provide NAVIANCE with the education records listed in this section:

- 1) To allow for proper student registration within the system
- 2) for proper reporting of the information back to school administrators; reports consist of individual and aggregate data usage reports (including students' survey results), and information from progress assessments, education plans, resumes and favorite colleges, careers and more.

(b) SBBC will provide NAVIANCE with the following education records:

- 1) Student first and last name

- 2) Student identification number
  - 3) Student date of birth
  - 4) Student gender
  - 5) Student grade level
  - 6) Student SBBC and personal email addresses
  - 7) Parents' email address
  - 8) Student home address
  - 9) Student graduation year
  - 10) School location
  - 11) Student assessment results
  - 12) Student resumes
  - 13) Student favorite occupations
  - 14) Student college preferences
  - 15) Student surveys created by SBBC
  - 16) Student surveys created by NAVIANCE
  - 17) Staff email and notes to students input into the online platform
- (c) In addition to the education records being disclosed by SBBC in this section, NAVIANCE will also have access to college and career information input by students in NAVIANCE's online platform.
- (d) NAVIANCE is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from SBBC student education records for the purposes listed above. Pursuant to the Family Education Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age eighteen (18) or over is needed for any types or purposes of disclosures of education records beyond those listed above.
- (e) This section supersedes any of NAVIANCE's privacy policies re: collecting and using education records and student information.

2.07 **NAVIANCE Confidentiality of Student Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, NAVIANCE shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that



require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com), and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost only if the breach is determined to be caused solely by the NAVIANCE, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law only if it is determined the breach is caused solely by NAVIANCE;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) NAVIANCE shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses

incurred by or imposed upon SBBC arising out of a breach of this covenant caused solely by NAVIANCE, or an officer, employee, agent, representative, contractor, or sub-contractor of NAVIANCE to the extent that NAVIANCE or an officer, employee, agent, representative, contractor, or sub-contractor of NAVIANCE shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.08 **SBBC Disclosure of Employee Records.**

(a) SBBC will provide NAVIANCE with the employee records listed in this section for the following purposes:

- 1) For NAVIANCE to grant District employees with access to NAVIANCE systems
- 2) For NAVIANCE to provide updates to facilitate and improve the use of the system  
this may include:
  - a. Instructional information for using the system
  - b. Administering the system to students
  - c. New enhancements to the product/system
  - d. Information on product and/or system training

(b) SBBC will provide the following employee records to NAVIANCE:

- 1) first and last name
- 2) identification number
- 3) SBBC email address
- 4) work phone number
- 5) name of school
- 6) school location number
- 7) staff email and notes to students input into the online platform

(c) NAVIANCE shall not use the employee records listed in this section for any purpose other than those listed above or re-disclose the records to any outside source without the prior written consent of the employee, except as required or allowable by law.

2.09 **NAVIANCE Safeguarding Confidential Employee Records.**

Notwithstanding any provision to the contrary within this Agreement, NAVIANCE shall:

(a) fully comply with the requirements of state or federal law or regulation regarding the confidentiality of employee records;

(b) hold the employee records in strict confidence and not use or disclose same except as required by this Agreement or as required or permitted by law;

(c) only share employee records with those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement;



(d) protect employee records through administrative, physical and technological safeguards to ensure adequate controls are in place to protect the employee's records and information;

(e) notify SBBC immediately upon discovery of a breach of confidentiality of employee records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

(f) prepare and distribute, at its own cost, any and all required notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so only if it is determined breach of confidentiality was solely caused by NAVIANCE; and

(g) be responsible for any fines or penalties for failure to meet notice requirements pursuant to federal and/or Florida law only if it is determined breach of confidentiality was solely caused by NAVIANCE. This section shall survive the termination of all performance or obligations under this Agreement.

2.10 **Inspection of NAVIANCE's Records by SBBC.** NAVIANCE shall establish and maintain books, records and documents (including electronic storage media) of a financial nature only sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All NAVIANCE'S applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of NAVIANCE'S directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to NAVIANCE'S records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to NAVIANCE pursuant to this Agreement.

(b) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide NAVIANCE reasonable advance written notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) **Audit Site Conditions.** SBBC's agent or its authorized representative shall be provided access to NAVIANCE's facilities and to all records related only to this Agreement and shall be provided adequate and appropriate workspace in order to exercise the rights permitted under this section. NAVIANCE reserves the right in its sole discretion not to permit access to SBBC's agent or its authorized representative. NAVIANCE would not permit access that would compromise security, privacy, or business operations in general

(d) **Failure to Permit Inspection.** Failure by NAVIANCE to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section may constitute

grounds for termination of this Agreement by SBBC for cause and may be grounds for SBBC's denial of some or all of any NAVIANCE'S claims for payment.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by NAVIANCE in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by NAVIANCE. If the audit discloses billings or charges to which NAVIANCE is not contractually entitled, NAVIANCE shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, NAVIANCE shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by NAVIANCE to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to NAVIANCE pursuant to this Agreement and such excluded costs shall become the liability of NAVIANCE.

(g) Inspector General Audits. NAVIANCE shall comply and cooperate within a reasonable period of time with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.11 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC:	Superintendent of Schools The School Board of Broward County, Florida 600 Southeast Third Avenue Fort Lauderdale, Florida 33301
With a Copy to:	Director of School Counseling and Brace Advisement Lauderdale Manors Resource Center 1400 NW 14 <sup>th</sup> Ct. Fort Lauderdale, Florida 33311
To :	NAVIANCE, INC. 3033 Wilson Boulevard Suite 500 Arlington, VA 22201
With a Copy to:	Amy Reitz, Senior Vice President, Product Naviance, Inc. 3033 Wilson Boulevard, Suite 500 Arlington, VA 22201



2.12 **Background Screening.** NAVIANCE shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes as applicable, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of NAVIANCE or its personnel providing any services under the conditions described in the previous sentence. NAVIANCE shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to NAVIANCE and its personnel as applicable. The parties agree that the failure of NAVIANCE to perform any of the duties described in this section as applicable shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. NAVIANCE agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from NAVIANCE failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.13 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. NAVIANCE shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, NAVIANCE shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. NAVIANCE shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if NAVIANCE does not transfer the public records to SBBC. Upon completion of the Agreement, NAVIANCE shall transfer, at no cost, to SBBC all public records in possession of NAVIANCE or keep and maintain public records required by SBBC to perform the services required under the Agreement. If NAVIANCE transfers all public records to SBBC upon completion of the Agreement, NAVIANCE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If NAVIANCE keeps and maintains public records upon completion of the Agreement, NAVIANCE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

2.14 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) **By SBBC.** SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) **By NAVIANCE.** NAVIANCE agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery



costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by NAVIANCE, its agents, servants or employees; the equipment of NAVIANCE, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of NAVIANCE or the negligence of NAVIANCE agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by NAVIANCE, SBBC or otherwise.

2.15 **Insurance Requirements.** NAVIANCE shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** NAVIANCE shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** NAVIANCE shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** NAVIANCE shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Acceptability of Insurance Carriers.** The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(e) **Verification of Coverage.** Proof of the required insurance must be furnished by NAVIANCE to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit NAVIANCE to remedy any deficiencies. NAVIANCE must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(f) **Required Conditions.** Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are included as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.



- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) **Cancellation of Insurance.** NAVIANCE is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.16 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

2.17 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.18 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall



represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) calendar days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) calendar days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination with cause, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts (as defined in Section 2.04) for any services scheduled to be delivered after the effective date of such termination. In the event of early termination by SBBC without cause as stated in this Section 3.05, SBBC acknowledges and accepts that any pre-paid annual fee for Naviance Essential Services (as defined in Section 2.04) for the then-current year of the Term, shall be non-refundable. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States



District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Except with regard to payment obligations, neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood,

acts of God, strikes, or other labor disputes, riot or civil commotions, epidemics, pandemics, government regulations, and the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**



**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]**

**FOR NAVIANCE :**

(Corporate Seal)

ATTEST:

NAVIANCE, INC.

\_\_\_\_\_, Secretary

By \_\_\_\_\_

DocuSigned by:  
*Paul McConville*  
B3C548FF88CF464

Paul McConville

Print Name: \_\_\_\_\_

SVP - Sales & AM

Title: \_\_\_\_\_

DocuSigned by:  
*Jaime Blair*  
6D9A784E407B43D

Witness \_\_\_\_\_

DocuSigned by:  
*Laura Fischer*  
064DC2182E2B462

Witness \_\_\_\_\_

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Virginia

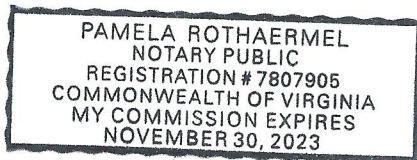
COUNTY OF Arlington

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this Aug 7<sup>th</sup>, 2020 (date) by Paul McConville (name of officer or agent, title of officer or agent) of Hobsons (name of corporation acknowledging), a Virginia (state or place of incorporation) corporation, on behalf of the corporation. He/she is  personally known to me (underline if applicable) or has produced \_\_\_\_\_ (type of identification) as identification and who  did/ did not first take an oath this 7<sup>th</sup> day of August, 2020.

My Commission Expires: Nov 30, 2023

Pamela Rothaermel  
Signature - Notary Public

(SEAL)



Pamela Rothaermel  
Notary's Printed Name

7807905  
Notary's Commission No.